

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Broadcast Localism) MB Docket No. 04-233
)

To: The Office of the Secretary
Attention: The Commission
ELECTRONIC FILING

COMMENTS OF BIBLE BROADCASTING NETWORK, INC.
ON REPORT ON BROADCAST LOCALISM
AND NOTICE OF PROPOSED RULEMAKING

Bible Broadcasting Network, Inc. (“BBN”)¹, by its attorneys, and pursuant to Section 1.415 of the Commission’s Rules, hereby files its Comments on the notice of proposed rule making contained within the *Report on Broadcast Localism and Notice of Proposed Rulemaking*, FCC 07-218, released January 24, 2008 [73 Fed. Reg. 8255, published February 13, 2008] (“*NPRM*”).²

Summary of Filing

¹ BBN is licensee of 34 full power NCE (“NCE”) radio stations nationwide and numerous FM translators.

² Time for filing Comments was extended to April 28, 2008, by *Public Notice*, DA 08-515, released March 3, 2008, so these Comments are timely filed.

The Commission should not adopt rules as proposed in the NPRM. The proposed rules that would mandate the creation of Community Advisory Boards and the keeping and filing of detailed quarterly reports summarizing a licensee's past programming directed to community issues will not have any positive effect. Requiring stations to be staffed whenever they are on the air will most likely result in a reduction of service due to economic constraints and could seriously adversely affect NCE ("NCE") licensees like BBN. BBN operates all 34 of its stations, pursuant to main studio waivers, from a main studio in Charlotte, North Carolina. Although BBN urges the Commission to reject all the proposals and make no new rules, it focuses on the three aspects of the NPRM that could cause the most difficulty for BBN and other NCE broadcasters: Community Advisory Boards, Remote Station Operation and Main Studio Location.

Community Advisory Boards. The NPRM tentatively concluded that each licensee should convene a permanent advisory board made up of officials and other leaders from the service area of its broadcast station, based on the belief that these boards will promote both localism and diversity. BBN suggests this will not promote localism and diversity any more than the Commission's now-abandoned ascertainment process promoted localism and diversity. The proposal is the exact same procedure as the defunct formal "ascertainment" only writ another way and fraught with more potential problems. If adopted, the rules will be abandoned in the future; just at the

previous ascertainment methods were abolished. The FCC's recently revised *Public and Broadcasting* publication sets out the dilemma that would be faced by broadcasters who rejected suggestions from the Community Advisory Board. "The First Amendment, as well as Section 326 of the Communications Act, prohibits the Commission from censoring broadcast material and from interfering with freedom of expression in broadcasting."³ Moreover, "Licensees are responsible for selecting their entertainment programming, as well as programs concerning local issues, news, public affairs, religion, sports events, and other subjects."⁴ "In light of their discretion to formulate their programming, station licensees are not required to broadcast everything that is offered or otherwise suggested to them."⁵ On the one hand, broadcasters have great discretion to broadcast what they judge to be in the public interest, but, on the other hand, if the new rules are adopted, broadcasters will run the risk of offending the community advisors (and setting themselves up for unwarranted trouble at renewal time) if they reject some suggestion made in the course of ascertainment. A federally-mandated community advisory board making program decisions would clearly violate Section 326 of the Communications Act. While some licensees have reported the benefits of community advisory boards in ascertaining

³ *The Public and Broadcasting*, Revised April 2008, at page 11.

⁴ *Ibid*, page 11.

⁵ *Ibid*, page 11.

matters of local interest,⁶ these were voluntary methods created by the licensees to assist the licensees, not quasi-official organizations required by the government. A licensee engaging in such voluntary methods can deviate from its plan based on its judgment so long as the licensee develops a list of issues to which it can respond with programs. But, once the heavy hand of government imposes the proposed requirements, broadcasters will be forced to comply exactly with the rubrics which will take on the aspects of holy writ. This is especially problematic for an NCE broadcaster like BBN that features programs that offer spiritual guidance and uplift to its audience. What if a community advisory board member is an atheist who insists that BBN carry programs espousing a view contra to the basic beliefs of BBN's listeners? At minimum, the rules should not apply to NCE broadcasters.

At renewal time, broadcasters will be bracing for “gotcha” petitions from some unscrupulous activist groups or the hypothetical atheists insisting that BBN lose its licenses for failure to properly broadcast issue-responsive programming. If the past is any guide, would-be petitioners can be expected to send their minions far and wide to scrutinize public files and internet postings, to record station programming and then compare the data gleaned

⁶ Under the terms of its main studio waivers, BBN has a local advisory board with at least one member from the local community. But, this advisory board is established to help BBN ascertain the needs of the distant community where there is no local main studio. (See *Letter to Gary S. Smithwick, Esq.*, dated January 27, 2003, granting a main studio waiver to BBN for the operation of WYFP(FM), Harpswell, Maine.) This is a drastic distinction from the general overall scheme the FCC proposes in the NPRM which would require community advisory boards in the same communities where licensees operate their main studios.

with what the licensee submits with its renewal application. They will flyspeck that application and seize on any discrepancy, no matter how innocent, crying “misrepresentation” since the application will no doubt be backed up by a certification that the information in the application is pristine. This will give birth to a behemoth of unwarranted trouble for both broadcasters desperately fighting for their survival and for the overworked Commission staff that will have to deal with frivolous objections.

Remote Station Operation. The NPRM discusses the Commission’s concern that automated broadcast operations, which allow the operation of stations without a local presence, may have a “perceived” negative impact that such remote operation may have on licensees’ ability to determine and serve local needs. This is plainly an incorrect finding. In 1995, the Commission authorized unattended technical operation of broadcast stations and expanded the ability of stations to control and monitor station technical operations from remote locations. The NPRM recognizes that licensees “have broadly embraced this new technical flexibility, and many stations now operate for extended periods without station personnel present at or near transmission facilities.” The NPRM mentions the *Digital Audio FNPRM* at 10391 ¶ 119, wherein the Commission asked whether it should review its rules and determinations that facilitated the development of the automated radio broadcast operations. It also asked whether changes in remote radio operation should affect existing rules. In a footnote, the NPRM notes “we do

not seek comment on this issue here; these issues will be resolved in the Digital Audio Broadcasting docket (MM Docket No. 99-325).” However, whether sought or not, BBN is commenting here and in MM Docket No. 99-325, since the Commission has referenced the issue in this docket and adequate notice was not given in MM Docket No. 99-325 that the rules applicable to digital broadcasting could impact analog broadcasting in this manner. The Commission is “considering requiring that licensees maintain a physical presence at each radio broadcasting facility during all hours of operation.” Without any regard for the unintended consequences of such a rule, the Commission says, “Requiring that all radio stations be attended can only increase the ability of the station to provide information of a local nature to the community of license. This is an insupportable fallacy and based on the same kind of wishful reasoning as was found to be arbitrary and capricious in the court’s abolition of the former comparative hearing procedures that were followed with Talmudic zeal for many years.⁷

The direct result of such a misguided rule would not expand radio service during times of emergencies, but would have the exact opposite effect. The NPRM ignores the provisions of Section 73.1740 of the Rules (not teed up for modification in this proceeding) which, in practical effect, does not require

⁷ The United States Court of Appeals for the District of Columbia Circuit issued a decision regarding the Commission's comparative process in *Bechtel v. FCC*, 10 F.3d 875 (D.C. Cir. 1993). The court ruled that the integration of ownership into management, one of the principal criteria used in evaluating applicants for new broadcast facilities, is arbitrary and capricious and therefore unlawful.

NCE stations to operate on a regular schedule. The direct result of the Commission's proposal is that many noncommercial radio stations would terminate all operations when a small audience could be predicted rather than pay an employee to "babysit" during those hours. When the need for emergency information dissemination may be most acute, there could be radio silence throughout much of the country. Given that many broadcast stations operate overnight unattended and at minimal expense, many will choose to go silent rather than take on the additional costs of staffing the station during hours when revenues are small or non-existent. Many will simply sign off.

There is no need for regulation here because there are procedures in place at many stations, including BBN stations, for alerting the public when an emergency happens during the hours when the stations are unattended.

This is 2008, not 1934, or even 1981 when radio was deregulated in part. Many technological innovations have made it not only possible, but desirable to operate stations by remote control. Most stations, including BBN's, have in place sophisticated equipment that allows the station to go on the air in an emergency even when unattended. BBN's stations operate, pursuant to Commission-granted main studio waivers with the main studio in Charlotte, North Carolina. When each waiver was granted, the Commission made a finding that the waiver was in the public interest.⁸ The

⁸ Questions are also raised as to whether the Commission's action in requiring main studios in a station's community of license would require a hearing under Section 316 of the

Commission stated that it recognized “the benefits of centralized operation of NCE stations, given their limited funding, and thus found good cause exists to waive the main studio location requirement where satellite operations are proposed.” See *Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, 13 FCC Rcd 15691 (1998), *recon. granted in part*, 14 FCC Rcd 11113 (1999). Is it the Commission’s intention to turn this precedent on its head? Are main studio waivers to be rescinded in light of this misguided proposed set of rules? BBN urges, no, implores the Commission to focus on the real damage its proposed rules would do to NCE stations and not adopt the proposed rules.

Main Studio Location. For BBN, one of the most problematic proposals is to require that licensees locate their main studios within their local communities so that they are “part of the neighborhood.” This reveals a depth of misunderstanding of 21st century radio that is truly remarkable. While the Commission cites language from the septuagenarian Communications Act, the Commission seems oblivious to the changes facing radio broadcasters today that are vastly different from the environment as in 1934 when the Communications Act was new. Back in the day, there were usually no more than one or two stations in a community outside the largest

Communications Act. For example, the license of BBN’s Station KYFB(FM), Denison, TX, contains the following condition:

“2 Waiver of 47 C.F.R. Section 73.1125 was previously granted to allow operation of this facility as a satellite operation of the following station: WYFQ(AM), Facility ID# 5152, Charlotte, NC”

population centers and there was no television. It made very logical sense to locate the main studio in the community of license since many programs consisted of live orchestras and drama programs. But this is 2008! The 1934-era requirement “that a broadcast station's main studio be accessible to its community of license” is not jeopardized by locating the main studio within the limits set forth in the current main studio location rule.⁹ The Commission should **NOT** revert to the pre-1987 main studio rule for any reason, especially when doing so will do such violence to BBN and other similarly-situated noncommercial broadcasters. There is no evidence that it will encourage broadcasters to produce locally originated programming since there is no local program origination rule. It was abolished in 1987 backed up by sound reasoning.¹⁰ Counsel has been informed by some of his clients that few, if any members of the public, come to a radio station’s main studio. Even then, the rules do not require any program origination. Members of the public show up at a main studio for what? To go on the air? Except for qualified political candidates, the licensee has no obligation to put anyone on

⁹ See 47 C.F.R. §73.1125.

¹⁰ See, *Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, FCC Rcd 3215 (1987) (“Although compliance with the rule's formula may have served as a factor in determining whether the studio in the community was in fact the station's *main* studio, we believe this function of the rule is not essential. Moreover, the requirements may have imposed significant costs. The greatest cost may have been the loss of certain responsive programming. The rule's formula may have prevented stations from originating some programming from outside the community which would have made them exceed the 49% cap on outside programming. In addition, the inflexibility of the origination rule gave rise to frequent requests for waivers of the rule, resulting in administrative costs.”)

the air.¹¹ Because there is no obligation to produce or originate even one nanosecond of programming from the main studio, location of the main studio in the community of license cannot be expected to increase interaction between the broadcast station and the community of service and there is no evidence to the contrary. It can only be expected to increase operating costs with no benefit.

The Commission is also not considering the real economic impact of reverting to the pre-1987 rule. Reverting to staffing all BBN's stations would be an economic blow that is hard to contemplate. The rules should not be adopted.

Respectfully submitted,

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¹¹ Title 47 USC § 326.

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